

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

MIDTOWN SCOUTS SQUARE  
PROPERTY, LP

MIDTOWN SCOUTS SQUARE, LLC

DEBTORS.

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CASE NO. 13-32920  
(Chapter 11)

Jointly Administered  
Judge Brown

**MOTION FOR AUTHORITY TO TO INCUR POST PETITION INDEBTEDNESS  
UNDER 11 U.S.C. §364 AND §105 AND REQUEST FOR FINAL HEARING**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 14 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Midtown Scouts Square Property, LP ("MSSP" or "Debtor MSSP") and Midtown Scouts Square, LLC ("Debtor MSS") (collectively "Debtors"), file this *Emergency Motion (I) for Order Granting Authority to Incur Post Petition Indebtedness Under 11 U.S.C. §364 and §105 a*(the "Motion") and in support thereof, respectfully states as follows:

**Summary of Relief Requested**

1. Debtors own two commercial properties located in Midtown Houston, Texas. The first property is a mixed use office/restaurant building totaling approximately 36,472 sq. feet located at 1911 Bagby Street, Houston, Texas (the "Office Building"). The second building is approximately 104,188 sq. foot eight story parking garage with ground floor retail space located at 1910 Bagby Street, Houston, Texas (the "Parking Garage").

2. These Chapter 11 cases were each filed on May 9, 2013 and are jointly administered. By this Motion, Debtors seek authority to incur post-petition indebtedness pursuant to their pre-petition loan agreement with Mercantile Capital Corporation, which holds second liens on the Debtors' assets. The indebtedness will be secured pursuant to Mercantile's pre-petition loan agreement and deed of trust. The post-petition indebtedness is limited to draw requests no. 6 and no. 7 on the Debtors' construction loan in the collective amount of \$28,173.93. Copies of draw requests no. 6 and 7 are attached hereto as Exhibits A and B, respectively.

3. Debtors move this Court on for approval of the post-petition financing in order to satisfy the ordinary and necessary expenses of operation. Debtors request the Court consider this Motion upon expiration of the fourteen (14) day notice period provided for in Bankruptcy Rule 4001.

**I. Jurisdiction and Venue**

4. This Court has jurisdiction over these cases pursuant to 28 U.S.C. § § 157 and 1334.

5. This is a core proceeding under 28 U.S.C. § 157(b)(2)(D).

6. Venue of the Debtors' Chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1409.

## **II. Background Information**

### **A. Overview of the Debtors**

7. These cases were filed on May 9, 2013 (the "Petition Date") under Chapter 11 of Title 11 of the Bankruptcy Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their property as a debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

8. No trustee or examiner has been appointed in these bankruptcy cases and no official committee of unsecured creditors has yet been established.

9. Debtor MSSP is a limited partnership that owns the mixed use Office Building located 1911 Bagby Street, Houston, Texas 770002 and the eight story Parking Garage located at 1910 Bagby Street. Debtor MSS is the general partner of MSSP. The properties are located at the east corner of Bagby and Pierce Avenue in Houston. This location is an area of the city known as Midtown. Midtown is Houston's pedestrian oriented urban community uniquely positioned on the near/southwest side of the Houston central business district.

10. The Office Building was originally constructed in 1975 and consisted of a two story 25,549 square foot building. In 2011, the Debtors purchased and began renovations of the building to include a third floor containing an additional 10,923 square feet of additional office space. The ground floor has been renovated as a restaurant space and the second floor is banquet and event center space. Mr. Peebles Seafood + Steaks currently occupies the ground floor and the second floor space and opened for business in July 2013. The third floor of the Office

Building is currently unoccupied. The Office Building also has a basement that contains approximately 7,606 of usable space. The basement is currently unfinished.

11. In 2011, the Debtor purchased .0359 acres of unimproved raw land at 1910 Bagby for the purposes of constructing the eight story parking structure with retail on the first floor. The construction of the Parking Garage is complete and the retail space is occupied by Blackfinn American Grille, an upscale restaurant that offers several distinct grill/lounge environments. The Parking Garage has approximately 238 total spaces. There is very little parking in the immediate area to serve the local restaurants and businesses and the garage is favorably located. The Parking Garage generates approximately \$22,000 a month in rent and parking charges. Market rate in the area for parking is approximately \$6.00 per day per spot.

## **B. Financing History**

### Bank of Houston

12. On or about January 4, 2011, Debtors entered into a promissory note (the "First BH Note") with Bank of Houston which provided, among other things, that Bank of Houston loan MSSP \$4,188,000.00 (the "First Loan") for the renovation of the Office Building to a mixed-use office/restaurant building, including adding a third floor to the Office Building.

13. The First BH Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust"), which covers the Office Building. The First BH Note is further evidenced by a Loan Agreement dated January 4, 2011 between the Debtor, certain affiliated guarantors, and Bank of Houston, which,

among other things, provided for the terms relating to the disbursements of the First Loan proceeds. The First BH Loan proceeds were fully funded by Bank of Houston.

14. On or about January 31, 2012, MSSP and Bank of Houston entered into a Modification, Renewal and Extension Agreement related to the First BH Note, which among other things, modified and renewed the First BH Note, carried forward all liens, and provided that MSSP would commence interest and principal payment on August 31, 2012 in equally monthly installments until July 31, 2037, when the remaining principal and unpaid interest is due and owing (the "Modified First BH Note").

15. On or about January 31, 2011, MSSP entered into a promissory note with Bank of Houston (the "Second BH Note") which provided, among other things, that Bank of Houston loan MSSP \$4,252,500 (the "Second Loan") for the for the acquisition, construction, development and operation of the Parking Garage.

16. The Second BH Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "BH Deed of Trust"), which covers the Parking Garage. The Second BH Note is further evidenced by a loan agreement dated January 4, 2011 between the Debtor, certain affiliated guarantors, and Bank of Houston, which, among other things, provided for the terms relating to the disbursements of the Second BH Note proceeds. The Second BH Note proceeds were fully funded by Bank of Houston and the construction of the Parking Garage is complete.

17. On or about January 31, 2012, MSSP and Bank of Houston entered into a Modification, Renewal and Extension Agreement related to the Second BH Note, which among other things, modified and renewed the Second BH Note, carried forward all liens, and provided that MSSP would commence interest and principal payment on July 4, 2012

in equal monthly installments of \$30,332.56 until June 4, 2015, when the remaining principal and unpaid interest is due and owing (the "Modified Second BH Note"). The Debtors are currently making adequate protection payments to the Bank of Houston.

Mercantile Capital Corporation

18. On or about January 31, 2011, MSSP entered into a promissory note ("Interim Note") with Mercantile Capital Corporation (the "Interim Lender" or "Mercantile") which provides, among other things, that the Interim Lender loan MSSP \$3,350,400.000 (the "Interim Loan") for the renovation of the Office Building (as described above).

19. The Interim Note is secured by a second Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Second Deed of Trust"), which covers the Office Building. The Interim Note is further evidenced by a Construction Coordination Agreement dated January 31, 2011 between the Debtor, the Bank of Houston and the Interim Lender, which, among other things, provides that the Interim Lender will advance funds pursuant to a construction draw agreement only after Bank of Houston has fully funded the First Loan.

20. In furtherance of the Interim Loan, the Debtor entered into an agreement regarding conversion of the Interim Loan from a construction loan to a permanent loan that would result in twenty year debenture guaranteed by the SBA at 4% interest. The Interim Loan matured in January 2012. However, pre-petition MSSP (through loans from its affiliates) continued making interest only payments to the Interim Lender. The Debtor and Mercantile entered into an extension agreement extending the terms Interim Loan up through September 15, 2013.

21. The construction of the Office Building is now complete. The final two draw requests have been approved by the third party inspector and been submitted to Mercantile for payment. Copies of the two draw requests and inspection reports are attached hereto as Exhibits A and B, respectively. The Debtors request authority to incur the indebtedness to Mercantile. The indebtedness will be secured pursuant to Mercantile's Second Deed of Trust and replacement liens granted to Mercantile pursuant to the Final Order Approving the Use of Cash Collateral (See Doc #33). To be clear, the post-petition indebtedness to Mercantile will be subordinate to the first liens and deeds of trust held by the Bank of Houston (pursuant to the terms of the Construction Coordination Agreement).

#### **C. Reasons for Filing Bankruptcy**

22. These bankruptcy cases were filed for two primary reasons. First, the Interim Loan had matured and the Debtor had been unable to convert it into permanent financing. The construction process was delayed when the City of Houston separately began to perform substantial infrastructure work on Bagby Street, which substantially limited the Debtors' access to the properties. As a result, the Debtors' general contractor was unable to maintain the construction schedule. Nevertheless, the construction of the Parking Garage is complete and the first floor retail space is occupied and generating monthly rental income. Mr. Peebles Seafood + Steaks is now occupying the first and second floors of the Office Building (as of June 1, 2013) and is an additional source of rental income. Second, a dispute between a prospective limited partner resulted in the commencement of a lawsuit. The Debtors have been unable to resolve the litigation. Further, the lawsuit has prevented the Debtors from converting the Interim Loan into the permanent SBA debenture.

#### **IV. BASIS FOR REQUESTED RELIEF**

##### **A. DIP Financing and Legal Standard**

23. As stated above, prior to the Petition Date, the Debtors entered into the loan documents with Bank of Houston and Mercantile, whereby the Debtors granted the Bank of Houston a first lien and security interest in substantially all of its assets, including rents (collectively "Collateral"). Mercantile has a second lien and deed of trust on the Office Building.

24. Construction on the Office Building is now complete and the Debtor seeks authority to incur the final amount of indebtedness to Mercantile in the amounts of \$9,088.84 (Draw Request No. 6) and \$19,085.09 (Draw Request No. 7), respectively.

25. Mercantile is willing to provide DIP financing to the Debtors in the amounts identified above. The DIP Financing shall be secured by Mercantile's pre-petition liens and Second Deed of Trust and will become part the balance owed on the Interim Loan. The interest rate will be based upon the pre-petition loan documents with Mercantile, which is currently 9.25%.

26. The DIP Financing will be used to fund the post-petition construction expenses.

27. A copy of the Interim Note is attached as Exhibit "C."

28. The Debtors believe that they have business justification for incurring the post-petition indebtedness in order to ensure that operations are funded.

29. Thus, the Debtors ask for this Court to authorize the Debtors to incur the post-petition indebtedness with Mercantile Capital Corporation in an amount up to \$28,173.93 which will be secured by Mercantile's pre-petition liens and Second Deed of Trust on the Office Building.



30. The Debtors are unable to obtain alternative financing on reasonable terms with such short notice. Further, the proposed terms of the agreement are favorable and it is unlikely that better terms could otherwise be negotiated.

31. Bankruptcy Rule 4001(c)(2) states that 14 days' notice must be given before final approval post-petition financing. With this Motion, the Debtor is providing Bank of Houston and Mercantile Capital Corporation with 14 days notice between the time of the filing of this Motion and request that the Court grant the Motion immediately upon expiration of the 14 day notice period. There is little harm to general unsecured creditors under this agreement since the secured lenders already has a first (or second) liens on substantially all of the Debtors' assets. Thus, if the Debtors cannot fund operations, they will have to cease operating and Bank of Houston and/or Mercantile Capital Corporation will foreclose on the properties, leaving nothing for unsecured creditors.

#### **IV. Conclusion**

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court:

- 1) Enter an order after expiration of fourteen (14) days notice authorizing the Debtors to incur post-petition indebtedness to Mercantile Capital Corporation; and
- 2) Grant all such other and further relief as is just and proper.

Respectfully submitted,

HOOVER SLOVACEK LLP

*/s/ T. Josh Judd*

By: \_\_\_\_\_

EDWARD L. ROTHBERG

State Bar No. 17313990

T. JOSH JUDD

State Bar No. 24036866

5847 San Felipe, Suite 2200

Houston, Texas 77057

Telephone: 713.977.8686

Facsimile: 713.977.5395

ATTORNEYS FOR *MIDTOWN SQUARE PROPERTY, LP AND  
MIDTOWN SCOUTS SQUARE, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing motion were forwarded via facsimile, e-mail, and/or U.S. first class mail, postage prepaid, on August 6, 2013, to the parties listed on the attached Service List.

**By ECF Notification:**

Ellen Maresh Hickman on behalf of U.S. Trustee US Trustee  
[ellen.hickman@usdoj.gov](mailto:ellen.hickman@usdoj.gov)

Yolanda M Humphrey on behalf of Creditor Midtown Management District  
[houbank@pbfc.com](mailto:houbank@pbfc.com), [tpope@pbfc.com](mailto:tpope@pbfc.com)

John S Mayer on behalf of Creditor Bank Of Houston  
[jmayer@rossbanks.com](mailto:jmayer@rossbanks.com)

Carl O Sandin on behalf of Creditor Midtown Management District  
[csandin@pbfc.com](mailto:csandin@pbfc.com), [tpope@pbfc.com](mailto:tpope@pbfc.com)

Owen Mark Sonik on behalf of Creditor Midtown Management District  
[osonik@pbfc.com](mailto:osonik@pbfc.com), [tpope@pbfc.com](mailto:tpope@pbfc.com)

US Trustee  
[USTPRegion07.HU.ECF@USDOJ.GOV](mailto:USTPRegion07.HU.ECF@USDOJ.GOV)

*/s/ T. Josh Judd*

\_\_\_\_\_  
T. Josh Judd

**Midtown Scouts Square Property, LP  
Midtown Scouts Square, LLC  
Jointly Administered Case #13-32920  
JOINT MASTER SERVICE LIST**

Midtown Scouts Square Property, LP  
Midtown Scouts Square, LLC  
8305 Knight Road  
Houston, TX 77054

Ellen M. Hickman  
Office of the United States Trustee  
515 Rusk Room 3516  
Houston, TX 77002

Eric Munding  
Bridge Capital Corporation  
2365 Rice, Suite 201  
Houston, TX 77005

Harris County, et al.  
Tax Assessor-Collector  
P O Box 4622  
Houston, TX 77210-4622

Harris County, et al.  
c/o Tara L. Grundemeier  
Linebarger Goggan Blair & Sampson  
P O Box 3064  
Houston, TX 77253-3503

Internal Revenue Service  
P O Box 7346  
Philadelphia, PA 19101-7346

Internal Revenue Service  
Insolvency Section  
1919 Smith MAIL STOP HOU 5022  
Houston, TX 77002

Texas Comptroller of Public Accounts  
Revenue Accounting Division  
Bankruptcy Section  
P O Box 12548  
Austin, TX 78711-2548

Midtown Management District  
P. O. Box 73109  
Houston, Texas 77273

**Secured Creditors:**

Bank of Houston  
750 Bering Drive, Suite 100  
Houston, TX 77057

Mercantile Capital Corporation  
60 North Court Avenue  
Suite 200  
Orlando, FL 32801

**20 Largest Unsecured Creditors:**

Allied Waste Services  
P O Box 78829  
Phoenix, AZ 85062-8829

Associated Time & Parking Controls  
904 Diplomacy Row  
Dallas, TX 75247

AWP Services  
11410 Larkdale Drive  
Houston, TX 77099

Belknap Concrete Cutting and Drilling  
9030 Solon Road  
Houston, TX 77064

BlackFinn  
c/o 1910 Bagby, LLC  
6300 Carmel Road, Suite 110B  
Charlotte, NC 28226

Cueto, James  
2500 Summer Street  
Houston, TX 77007

Discovery Construction  
701 N. Post Oak Rd. Suite 34  
Houston, TX 77024

Greenberg Traurig  
1000 Louisiana Street  
Suite 1700  
Houston, TX 77002

Harrell Architects  
9575 Katy Freeway, Suite 200  
Houston, TX 77024

Hicham Nafaa, Ali Bendella, and  
Neptunes Restaurant, LLC  
c/o Daniel D. Horowitz, III  
800 Commerce Street  
Houston, TX 77002-1776

Krenek Architects, Inc.  
7115 S. Mason Road, Suite 314  
Richmond, TX 77407

Lone Star Advantage  
5222 FM 1960 West, Suite 175  
Houston, TX 77069

Pyrotex Systems, Inc.  
P O Box 1639  
Alvin, TX 77512

Richey Family Limited Partnership  
PO Box 2569  
Stafford, TX 77497

Scott Youngblood CPA  
4512 Broadway Road  
Pearland, TX 77581

State Parking Services, Inc.  
1001 Texas Avenue  
Houston, TX 77002

Summit Landscaping Services, Inc.  
12452 Cutten Road  
Houston, TX 77002

Trio Electric Ltd.  
c/o Haynes and Boone, LLP  
Attn: Karl Burrer  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010

US Canvas & Awning Corporation  
8331 Northern Street  
Houston, TX 77071

Wholesale Restaurant Supply  
1949 Bingle Road  
Houston, TX 77055

AmeriPower, LLC  
PO Box 16206  
Sugar Land, TX 77496

**Parties Requesting Notice:**

Midtown Management District  
c/o Carl Sandin, Owen Sonik, Yolanda Humphrey  
Perdue Brandon Fielder Collins & Mott LLP  
1235 North Loop West, Suite 600  
Houston, TX 77008

Bank of Houston  
c/o John Mayer  
Ross Banks May Cron & Cavin PC  
2 Riverway Suite 700  
Houston, TX 77056

Mercantile Capital Corporation  
c/o Eyal Berger  
Akerman Senterfitt, P.A.  
350 East Las Olas Blvd., Suite 1600  
Fort Lauderdale, FL 33301

AmeriPower, LLC  
c/o Jennine Hovell-Cox  
Law Offices of Jennine Hovell-Cox  
P O Box 16276  
Sugar Land, TX 77496-6276

Richey Family Limited Partnership  
c/o Peter Johnson  
Law Office of Peter Johnson  
Eleven Greenway Plaza, Suite 2820  
Houston, Texas 77045

Atul Lucky Chopra, M.D.  
c/o D. John Neese, Jr.  
Hawash Meade Gaston Neese & Cicack, LLP  
1221 McKinney Street, Suite 3150  
Houston, TX 77056

Bank Of Houston  
c/o Stephen Craig Wilcox  
Adams Reese LLP  
1221 McKinney St, Ste 4400  
Houston, TX 77010

Harris County  
c/o Tara L. Grundemeier  
Linebarger Goggan Blair & Sampson, LLP  
P. O. Box 3064  
Houston, Texas 77253-3064

Bank of Houston  
c/o Lisa M. Hedrick  
ADAMS AND REESE, LLP  
4500 One Shell Square  
701 Poydrass Street, Suite 4500  
New Orleans, LA 70139

**APPLICATION AND CERTIFICATE FOR PAYMENT**

AIA DOCUMENT G702

TO: Midtown Scouts Square Property LP  
 Lucky Chopra  
 8305 Knight Road  
 Houston, Texas 77064

PROJECT: Mr. Peoples Restaurant  
 1911 Bagby, 1st Floor  
 Houston, Texas 77002

DISTRIBUTION TO:

☐ OWNER  
☐ ARCHITECT  
☒ CONTRACTOR

FROM CONTRACTOR:  
 Discovery Construction Inc.  
 701 N. Post Oak Rd. #340  
 Houston, Texas 77024

ARCHITECT: Perry N. Harrell, AIA  
 Harrell Architects, LP  
 9575 Katy Frwy, Ste. 200  
 Houston, Texas 77024

APPLICATION #: 7  
 APPLICATION DATE: 5/23/2013  
 PERIOD FROM: 5/13/2013  
 PERIOD TO: 5/23/2013

PROJECT NO: 11037062

CONTRACT DATE: October 15, 2012

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL TRADE CONTRACT ..... \$ 186,809.00

2. Add'l Trade Contract Assignments ..... \$ -

3. CONTRACT SUM TO DATE ..... \$ 186,809.00

4. TOTAL COMPLETE & STORED TO DATE ..... \$ 186,809.00

5. RETAINAGE:

a. 0% of completed work ..... -

b. 0% of stored materials \$ -

TOTAL RETAINAGE ..... -

6. TOTAL EARNED LESS RETAINAGE ..... \$ 186,809.00

7. LESS PREVIOUS CERTIFICATES OF PAYMENT ..... \$ 168,128.10

8. CURRENT PAYMENT DUE ..... \$ 18,680.90

9. BALANCE TO FINISH CONTRACT ..... \$0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved		
In previous months by Owner		
Total approved this Month		
TOTALS	\$ -	\$ -
NET CHANGES by Change Order	\$ -	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, 0 that all amounts have been paid by the Contractor for work for which previous Certificates for Payments were 0 issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: DISCOVERY CONSTRUCTION INC.

By:

Alejandro Ortiz, President

Date: May 23, 2013

State of Texas  
 County of Harris

Subscribed and sworn to before me this

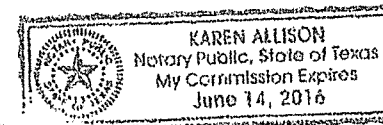
Notary Public:

Printed Name:

Karen Allison

My Commission Expires:

June 14, 2016

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief, the Work has progressed as indicated, the quantity of the Work is in accordance with the Contract Documents, and the Contract is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... \$

(Attached explanation if amount certified differs from the amount applied Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified)

ARCHITECT:

By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT

A

Labels

## CONTINUATION SHEET

AIA DOCUMENT G703

Page 2

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing

APPLICATION #: 7

Contractor's signed and certification is attached.

APPLICATION DATE: 05/23/13

In tabulations below, amounts are stated to the nearest dollar.

PERIOD FROM: 05/03/13

Use Column I on Contracts where variable retainage for line items may apply.

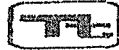
PERIOD TO: 05/23/13

Please use a separate AIA G703 document for all change orders that are issued on this Contract.

CONTRACT DATE: 10/15/12

A	B	C	D	E		F	G		H	I	
			WORK COMPLETED					TOTAL COMPLETED AND STORED TO DATE [D+E+F]	%	BALANCE TO FINISH [C-G]	RETAINAGE 10%
			FROM PREVIOUS APPLICATION [E+F]	PREVIOUS RETAINAGE	THIS APPLICATION						
ITEM NO.	DESCRIPTION	SCHEDULED VALUE			THIS PERIOD	STORED MATERIALS [not in D or E]					
1	Mobilization	\$ 5,000.00	\$ 5,000.00	\$ 500.00	\$ -		\$5,000.00	100%	\$ -	\$ -	
2	Structural	\$ 78,109.75	\$ 78,109.75	\$ 7,810.98	\$ -	\$ -	\$78,109.75	100%	\$ -	\$ -	
	- Demo existing bar area							100%			
	- Demo existing kitchen counter							100%			
	- Demo existing Office							100%			
	- Cristal Room Structural Work							100%			
	- Kitchen Counter Structure							100%			
	- Build 6' Opening in Counter							100%			
	- Build Bar Structure							100%			
	- Build Display Table Structure							100%			
	- Build Fur Downs							100%			
	- Build Columns							100%			
	- Build Arch							100%			
	- Build Booth Partition							100%			
	- Build Booth Structure							100%			
	- Install Patio Deck Extension (Labor Only)							100%			
	- Install Ceiling Tiles							100%			
	- Install Granite Countertops							100%			
	- Install Ceramic Tiles (Restrooms)							100%			
	- Final Cleaning							100%			
3	Electrical	\$ 24,500.00	\$ 24,500.00	\$ 2,450.00	\$ -	\$ -	\$24,500.00	100%	\$ -	\$ -	
4	HVAC	\$ 30,848.50	\$ 30,848.50	\$ 3,084.85	\$ -	\$ -	\$30,848.50	100%	\$ -	\$ -	
5	Plumbing	\$ 21,300.00	\$ 21,300.00	\$ 2,130.00	\$ -	\$ -	\$21,300.00	100%	\$ -	\$ -	
6	Sprinkler	\$ 4,500.00	\$ 4,500.00	\$ 450.00	\$ -	\$ -	\$4,500.00	100%	\$ -	\$ -	
7	Fire Alarm	\$ 5,272.00	\$ 5,272.00	\$ 527.20	\$ -	\$ -	\$5,272.00	100%	\$ -	\$ -	
8	General Contractor Fee	\$ 17,278.75	\$ 17,278.75	\$ 1,727.88	\$ -	\$ -	\$17,278.75	100%	\$ -	\$ -	
	Page Totals	\$186,809.00	\$186,809.00	\$18,680.90	\$0.00	\$0.00	\$186,809.00		\$0.00	\$0.00	

DATE: 6/7/2013

CONSTRUCTION MANAGEMENT & INSPECTION, INC.  
PROJECT DRAW REPORT - DRAW # FINAL

PROJECT #: 26997-1 W Completion Commitment  
 PROJECT NAME: ADMA - Bagby - Mr. Peoples Rest.  
 OWNER: Advanced Diagnostic - Dr. Lucky Chiropt  
 832-605-7385 - Contact Site for Inspection [Ren@artescano.com](mailto:Ren@artescano.com)  
 CONTRACTOR: Discovery Construction Inc.  
 713-957-5031

LENDER: Merchantile Bank - Lisa Bots

INSPECTOR: Tom Partin

#DRAWS  
#INSPECTIONS

ORIGINAL CONSTR	\$186,809.00
Net Change Orders	\$0.00
TOTAL CONSTR	\$186,809.00
Previous Disbursed	\$186,809.00
Current Disbursed	\$0.00
TOTAL CONSTR STORED	\$186,809.00
Less Retention (10%)	\$0.00
TOTAL LESS RETENTION	\$186,809.00
CONSTR BALANCE	\$0.00
CONSTR PAID + RFT	\$0.00
Net Percent Disbursed:	100%

	CATEGORY DESCRIPTION	ORIGINAL CONTRACT	Change Orders	Reallocations	REVISED CONTRACT	PREVIOUS DISBURSED	Draw 7	TOTAL DISBURSED	Retention 7	AMOUNT IN RETENTION	BUDGET BALANCE	% PAID	% Comp
1	Mobilization	\$5,000.00	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$5,000.00	(\$1,000.00)	\$0.00	\$0.00	100%	
2	Structural	\$78,109.75	\$0.00	\$0.00	\$78,109.75	\$78,109.75	\$0.00	\$78,109.75	(\$7,810.98)	\$0.00	\$0.00	100%	
3	Electrical	\$24,500.00	\$0.00	\$0.00	\$24,500.00	\$24,500.00	\$0.00	\$24,500.00	(\$2,450.00)	\$0.00	\$0.00	100%	
4	HVAC	\$30,848.50	\$0.00	\$0.00	\$30,848.50	\$30,848.50	\$0.00	\$30,848.50	(\$3,084.85)	\$0.01	\$0.00	100%	
5	Plumbing	\$21,300.00	\$0.00	\$0.00	\$21,300.00	\$21,300.00	\$0.00	\$21,300.00	(\$2,130.00)	\$0.00	\$0.00	100%	
6	Sprinkler	\$4,500.00	\$0.00	\$0.00	\$4,500.00	\$4,500.00	\$0.00	\$4,500.00	(\$450.00)	\$0.00	\$0.00	100%	
7	Fire Alarm	\$5,272.00	\$0.00	\$0.00	\$5,272.00	\$5,272.00	\$0.00	\$5,272.00	(\$527.20)	\$0.01	\$0.00	100%	
8	General Contractor Fee	\$17,278.75	\$0.00	\$0.00	\$17,278.75	\$17,278.75	\$0.00	\$17,278.75	(\$1,727.87)	\$0.01	\$0.00	100%	
9	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	(\$0.00)	(\$0.00)	\$0.00	100%	
Total Construction Contract Costs		\$186,809.00	\$0.00	\$0.00	\$186,809.00	\$186,809.00	\$0.00	\$186,809.00	(\$18,680.95)	\$0.00	\$0.00	100%	

Current Draw Amount

\$10,600.96

Payment of Draw Approved:

General Contractor

Owner

Inspector

Overall % Completion

NOTES:





**TETRA TECH, INC.**

Construction Management & Inspection, Inc.

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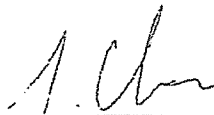
Date: May 29, 2013

Owner Certification and Authorization for Disbursement

The undersigned Owner **Advanced Diagnostic Management, LLP** has reviewed the draw request for the Bagby Mr. Peeples Restaurant project and does hereby authorize and direct Lender to disburse the sum of \$18,680.96 from loan proceeds. And furthermore hereby approves payment of Draw No. FINAL and has reviewed the attached draw report.

The Owner certifies that there has been no substantial adverse changes in his/her financial conditions, organization, operation, or fixed assets since the application for this loan was submitted and originated or subsequent to any previous disbursement by Lender.

Acknowledged and Agreed By:

  
\_\_\_\_\_  
Owner's Signature

6/7/13  
Date

Lucy Chopra  
Printed Name



## CONTRACTORS' AFFIDAVIT OF COMPLETION AND PAYMENT OF BILLS AND INDEMNITY

Before me, the undersigned authority, on this date personally appeared Alejandro Ortiz (the "Affiant"; the official signor of the "Contractor"), who being first duly sworn by me, upon oath deposes and says that:

Affiant is duly authorized to make this affidavit and is fully and personally cognizant of all facts and matters herein stated. Affiant is aware of and makes this affidavit under the laws of the state where the Property described below is located.

Affiant is the (title) President of Discovery Construction, Inc. (the "Contractor"), the Contractor on the job hereinafter described.

All funds heretofore advanced by Mercantile Capital Corporation (the "Bank") to Discovery Construction, Inc. (the "Borrower" and/or "Contractor"), for the use with respect to certain construction of improvements in or on 1911 Bagby St. 1st Floor Houston, Texas (the "Property") have been applied to the payment of obligations due to Borrower and/or Contractor for materials, labor and other cost incurred in connection with such construction, and for no other purpose.

All of the work described on the schedule (the "Schedule") which is attached to the application for payment attached hereto (the "Application") has been completed in a workmanlike manner.

There are no bills for labor and/or materials unpaid incident to the construction of the improvements except those items identified by obligee, work and amount on the Schedule, and/or Contractor has not received any notice or communication that any subcontractor, materialman, laborer or other party other than as shown upon the Schedule, has not been paid currently for all labor and materials performed or furnished in connection with the construction.

The items shown on the Schedule in the aggregate of \$ 18,680.90 (final draw amount) represent the items presently due by Borrower and/or Contractor for labor, materials and other costs incurred in connection with the construction.

All sums advanced by Bank under or pursuant to the Application are for the sole purpose of paying obligations owing Borrower and/or Contractor as shown thereon, and for no other purpose.

Upon disbursement by Borrower and/or Contractor of the funds advanced by Bank under or pursuant to the Application, all obligations for labor, materials and other costs heretofore incurred by Borrower and/or Contractor in connection with such construction and which are due and payable will be immediately and fully paid and satisfied.

Affiant understands that this affidavit is made for the purpose of inducing Bank to make and advance to Borrower and/or Contractor incident to construction loan secured by the Property described above and that, in making any advance, Bank will rely upon the accuracy of the matters stated in this affidavit. Affiant and Borrower, jointly and severally will indemnify, defend and hold Bank harmless for, from, and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which Bank may suffer or incur because of any incorrect, false, or misleading statements contained in this affidavit.

All obligations of the Affiant and the Borrower set forth herein shall continue as long as Bank is subject to any potential, threatened or actual proceeding or legal action by reason of the fact

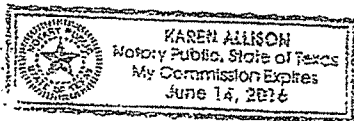
that Affiant or its subcontractors, materialmen, laborers and/or suppliers assert a right to payment or obtain a lien on the Property.

This affidavit and the agreements set forth herein shall be governed by the laws of the state where the Property is located. No amendment or modification of the terms of this Affidavit and indemnity shall be effective unless in writing and executed by the parties hereto. This Affidavit and Indemnity shall be binding upon and inure to the benefit of the parties, their successors and assigns. If any term hereof is declared to be unenforceable by a court of competent jurisdiction, that term shall be deleted and the enforceability of this Affidavit and Indemnity shall otherwise be unaffected.

Contractor: \_\_\_\_\_

Alejandro Ortiz, President of Discovery Construction, Inc.  
Affiant (in his individual capacity and as Contractor for Borrower)

SUBSCRIBED AND SWORN TO BEFORE ME this 24<sup>th</sup> day of May, 2013



Karen Allison  
Notary Public, State of Texas

OWNER'S (BORROWER) CONSENT TO ADVANCE

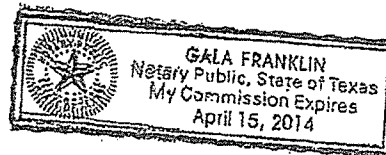
The undersigned, being an owner of the real property above described or other interested party, consents to the Bank's making the loan advance herein, above described and further described on the attached application for payment.

Owner: \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME this 11 day of June, 2013

Gala Franklin  
Notary Public, State of Texas

AFFIDAVIT/10210v1



# CITY OF HOUSTON

## CERTIFICATE OF OCCUPANCY

Owner or Occupant: MR. PEEPLES RESTAURANT

This certificate must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

1911	BAGBY	ST	100	lot	block
<small>street no.</small>	<small>street name</small>		<small>suite</small>		

RESTAURANT BUILDOUT 1-3-2-A2-A 100 % SPRINKLER 2006 IBC	0190
<small>occupancy use</small>	<small>occ. load</small>

FAIRGROUNDS WEST END	003	25-JUN-2013	2	A2	A
<small>subdivision</small>	<small>stories</small>	<small>date</small>	<small>type</small>	<small>group</small>	<small>rating</small>

The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

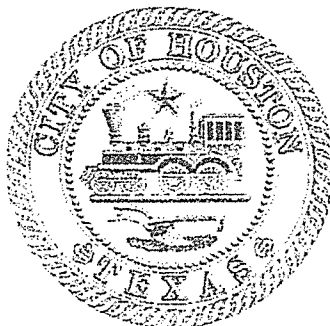
### NOTICE

The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 110.4. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

Project Number: 13000983  
 Receipt Number: 5380678  
 Film Number: 13000983

Prepared by JONES



*Thomas J. Hosey*  
 For Thomas J. Hosey, CBO, CASP  
 Building Official for the City of Houston



## CHECK REQUEST REPORT

Project Name: ADM Building/Mr. Peeples Restaurant  
 No. 26997-1  
 Disb. Agent AH

Final Draw

	Date Thru	Total	Retainage	Amount Paid	W-9
Discovery Construction Inc.	05/31/13	\$ 16,230.96	\$ -	\$ 16,230.96	X
701 N Post Oak Rd. Ste. 340					
Houston, TX 77024					
02-0815379 C Corp					
713-957-5031					
Franklin - Padilla Electric	05/31/13	\$ 2,450.00	\$ -	\$ 2,450.00	X
10101 SE Fwy Ste. 400					
Houston, TX 77074					
27-1837683 LLC C Corp					
281-804-9557					

Sub Total \$ 18,680.96 \$ - \$ 18,680.96

TT Invoice \$ 350.00 \$ 350.00

Total \$ 19,030.96 \$ - \$ 19,030.96



Tetra Tech Divisions  
A Division of Tetra Tech, Inc.  
3475 E. Foothill Blvd.  
Pasadena, CA 91107  
(626) 351-4664

Bill To: BANK OF HOUSTON  
ATTN: JENNIFER SURRENCY  
750 BERING DRIVE- SUITE 100  
HOUSTON, TX 77024

INVOICE NUMBER: 50682073  
INVOICE DATE: 05/31/2013  
REFERENCE: PCD200110105  
FEDERAL TAX ID#: 8514  
PROJECT: 100-CDI-26997  
BILLING PERIOD FROM: 05/15/2013  
BILLING PERIOD TO: 05/31/2013

Advanced Diagnostic Management, LLP  
8305 Knight Road  
Houston, TX 77054

**PROFESSIONAL SERVICES:**

ADM Building Addition/Renovation aka Scout Square Office Building  
May 15, 2013 through May 31, 2013

DESCRIPTION	TOTAL AMOUNT DUE
DRAW ADMINISTRATION	\$350.00

TOTAL AMOUNT DUE THIS INVOICE: **\$350.00**

Please Remit Invoice to:  
Tetra Tech Inc - Sunriver  
P.O. Box 3585  
56835 Venture Lane, Suite 204  
Sunriver, OR 97707

FOR FURTHER INFORMATION, PLEASE CONTACT THE  
UNDERSIGNED.

Project Manager:  
Halvorsen, Angela

To ensure accurate posting, please note the invoice number on your check. Interest will be charged on all past-due amounts per contract terms and conditions.



# INVOICE 6214

Invoice Date: 7/2/2013  
File Number: HT074305

**To:**

MERCANTILE CAPITAL CORPORATION  
60 N. COURT AVE.  
SUITE 200  
ORLANDO, FL 32801  
ATTN: LISA BOTT

**From:**

Old Republic National Title Insurance Company  
777 Post Oak Blvd.  
Suite 100  
Houston, TX 77056

Buyer:

Seller:

Reference:

Property Address: 1911 BAGBY ST. HOUSTON TX 77002

Brief Legal: Block 1, Reserve A, OLD SCOUTS PLAZA, a subdivision in Harris County, Texas.

Loan Amount:

Sales Amount:

Description	Amount	Qty	Total
Updated & Revised Nothing Further Report	\$50.00	1	\$50.00

Subtotal	\$50.00
Tax @ 8.25 %	\$4.13
Non Taxable Amt.	\$0.00
Credits	\$0.00
Grand Total	\$54.13

Please Remit To:

Old Republic National Title Insurance Company  
ATTN: Accounting  
777 Post Oak Blvd.  
Houston, TX 77056  
713-626-9220

*Thank you!*

HT074305  
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY  
CUSTOMER SERVICE DEPARTMENT  
777 POST OAK BLVD., SUITE 100  
HOUSTON, TEXAS 77056  
(713) 626-9220

NOTHING FURTHER REPORT

RE: 1911 BAGBY ST., HOUSTON, TX 77002

REQUESTED BY: MERCANTILE CAPITAL CORPORATION / LISA BOTT

LEGAL DESCRIPTION: Being all of OLD SCOUTS PLAZA SUBDIVISION, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded under Film Code No. 631243, of the Map Records of Harris County, Texas.

We have searched the Records of Old Republic National Title Insurance Company's Abstract Plant, as to the above described property, from January 16, 2013 to June 25, 2013 at 5:00 p.m., and find NOTHING FURTHER affecting title EXCEPT:

NONE OF RECORD

We have searched the Records of Old Republic National Title Insurance Company's Abstract Plant, for any adverse matters such as Abstract of Judgments, Federal and State Tax Liens, as to the following named person:

MIDTOWN SCOUTS SQUARE PROPERTY, LP

And we find only the following:

There is pending in Bankruptcy Court under Cause No. 201332920 / CHAPTER 11/ filed May 9, 2013, a bankruptcy styled MIDTOWN SCOUTS SQUARE PROPERTY LP, #27-4242777, which may affect the herein described property.

NOTICE: OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THIS INFORMATION. THIS INFORMATION IS SOLELY FOR THE USE OF THE PARTY REQUESTING IT AND NO ONE ELSE. OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY'S LIABILITY FOR ERRORS AND/OR OMISSIONS IN THIS INFORMATION SHALL BE LIMITED TO THE AMOUNT PAID FOR THIS REPORT. BY ACCEPTING THIS FORM, THE PARTY REQUESTING THE INFORMATION AGREES THAT THE DISCLAIMER OF WARRANTIES AND LIABILITY LIMITATION CONTAINED IN THIS PARAGRAPH IS A PART OF ITS CONTRACT WITH OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY AND SHALL COVER ALL ACTIONS WHETHER ARISING HEREUNDER BY STATUTE, IN CONTRACT, OR IN TORT.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

  
CUSTOMER SERVICE DEPARTMENT  
JESSE ARRIAZOLA



## Document Header

Clerk Number	Film Code	File Date	Doc Type	Amount	Pages	Control Number
201332920		5/9/2013	BK	\$0.00	0	95237492
Company	Lender	Doc Source	Status	Last Changed		
		B	2	05/10/2013		

201332920

Document Header

Document Remark

CHAPTER 11 (TX/S/3)

Party

Party 1 :

MIDTOWN SCOUTS SQUARE PRO

Index : N

Remark

27-4242777

MIDTOWN SCOUTS SQUARE PRO

Index : N

Remark

27-4242777



**TETRA TECH, INC.**

Construction Management &amp; Inspection, Inc.

Date: June <sup>25</sup>~~12~~, 2013

To: Lisa Bott - Mercantile Bank

RE: DRAW REQUEST ON THE FOLLOWING PROJECT:

Project Name: ADM Building/Mr. Peebles Rest.

Draw Final

Fee Invoice

Total To Fund

\$18,680.96

\$350.00

\$19,030.96

title fee  
plus \$154.13  
= \$19,085.00

This draw request has been inspected to compare the percentage of work verses the amount requested. Tt-CMI \_\_\_ is/or \_\_\_ is not in agreement with the amount requested. EXCEPTIONS NOTED; If you are in agreement with this request please wire the above stated amount into our Wells Fargo Bank Account #4100063957, Routing #121000248. Please fax notification of the wire transfer to our office (541-593-3604) once the deposit has been made. The contractor's checks will not be Federal Expresed without this notification.

Loan = \$17,937.30

The following documents are enclosed in this package:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Original Draw Report                 | <input type="checkbox"/> Reallocation of Funds                           |
| <input type="checkbox"/> Date Down Endorsement                           | <input type="checkbox"/> Change Orders                                   |
| <input type="checkbox"/> Foundation Endorsement                          | <input type="checkbox"/> Recorded Notice of Completion                   |
| <input type="checkbox"/> Inspection Report                               | <input checked="" type="checkbox"/> Certificate of Occupancy             |
| <input checked="" type="checkbox"/> Contractor signed Draw Report        | <input checked="" type="checkbox"/> Contractor's Affidavit of Completion |
| <input checked="" type="checkbox"/> Contractor's Application for Payment | <input type="checkbox"/> Building Permits                                |
| <input checked="" type="checkbox"/> Owner signed Draw Report             | <input checked="" type="checkbox"/> Check Register                       |
| <input checked="" type="checkbox"/> Owner Authorization for Disbursement | <input type="checkbox"/> Vendor Activity Report (Paid & Unpaid)          |

Borrower = \$11,147.79

\$19,085.09

The following documents have been received and are retained in our draw file.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Invoices for draw request     | <input checked="" type="checkbox"/> Payment Vouchers for draw request |
| <input checked="" type="checkbox"/> Lien Waivers for draw request | <input checked="" type="checkbox"/> Unconditionals Prev. Draw         |

Please notify us immediately if our balances are incorrect with your records. If you have any questions, please do not hesitate to call me.

Sincerely,

Angela Halvorsen

Angela Halvorsen  
Disbursement Agent/  
Contract Administrator

Banking Information  
Wells Fargo Bank  
1000 Lakes Drive  
Suite 250  
West Covina, CA 91790  
626-919-6602

DATE: 5/29/2013

CONSTRUCTION MANAGEMENT & INSPECTION, INC.  
PROJECT DRAW REPORT - DRAW # FINAL

PROJECT #: 26997-1 W Completion Commitment  
 PROJECT NAME: ADM - Bagby - Mr. Peebles Rest.  
 OWNER: Advanced Diagnostic - Dr. Lucky Chirop  
 832-605-7385 - Contact Jiten for Inspection [jiten@deccanco.com](mailto:jiten@deccanco.com)  
 CONTRACTOR: Discovery Construction, Inc.  
 713-957-5031

LENDER: Merchantile Bank - Lisa Bolts

INSPECTOR: Tom Parlin  
 #DRAWS  
 #INSPECTIONS

ORIGINAL CONSTR	\$186,809.00
Net Change Orders	\$0.00
TOTAL CONSTR	\$186,809.00
Previous Disbursed	\$186,809.00
Current Disbursed	\$0.00
TOTAL CONSTR STORED	\$186,809.00
Less Retention (10%):	\$0.00
TOTAL LESS RETENTION	\$186,809.00
CONSTR BALANCE	\$0.00
CONSTR BAL + RET	\$0.00
Net Percent Disbursed:	100%

	CATEGORY DESCRIPTION	ORIGINAL CONTRACT	Change Orders	Reallocations	REVISED CONTRACT	PREVIOUS DISBURSED	Draw 7	TOTAL DISBURSED	Retention 7	AMOUNT IN RETENTION	BUDGET BALANCE	% DISB	Rptd % Comp
1	Mobilization	\$5,000.00	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$5,000.00	(\$500.00)	\$0.00	\$0.00	100%	
2	Structural	\$78,109.75	\$0.00	\$0.00	\$78,109.75	\$78,109.75	\$0.00	\$78,109.75	(\$7,810.98)	\$0.00	\$0.00	100%	
3	Electrical	\$24,500.00	\$0.00	\$0.00	\$24,500.00	\$24,500.00	\$0.00	\$24,500.00	(\$2,450.00)	\$0.00	\$0.00	100%	
4	HVAC	\$30,848.50	\$0.00	\$0.00	\$30,848.50	\$30,848.50	\$0.00	\$30,848.50	(\$3,084.85)	\$0.01	\$0.00	100%	
5	Plumbing	\$21,300.00	\$0.00	\$0.00	\$21,300.00	\$21,300.00	\$0.00	\$21,300.00	(\$2,130.00)	\$0.00	\$0.00	100%	
6	Sprinkler	\$4,500.00	\$0.00	\$0.00	\$4,500.00	\$4,500.00	\$0.00	\$4,500.00	(\$450.00)	\$0.00	\$0.00	100%	
7	Fire Alarm	\$5,272.00	\$0.00	\$0.00	\$5,272.00	\$5,272.00	\$0.00	\$5,272.00	-\$527.20	\$0.04	\$0.00	100%	
8	General Contractor Fee	\$17,278.75	\$0.00	\$0.00	\$17,278.75	\$17,278.75	\$0.00	\$17,278.75	(\$1,727.87)	\$0.01	\$0.00	100%	
9	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	(\$0.00)	(\$0.00)	\$0.00	#DIV/0!	
Total Construction Contract Costs		\$186,809.00	\$0.00	\$0.00	\$186,809.00	\$186,809.00	\$0.00	\$186,809.00	(\$18,680.96)	\$0.00	\$0.00	100%	

Current Draw Amount

\$18,680.96

Payment of Draw Approved:

General Contractor

Owner

Inspector

Overall % Completion

NOTES:

# DRAW REQUEST INSPECTION REPORT

**PROJECT NAME:** ADM Building - Mr. Peeples Rest

**PROJECT LOCATION**
**1911 Bagby St**  
**HOUSTON, TX 77002**
**PROJECT #:** 100-CDI-26997

**BORROWER:**

 Advanced Diagnostics  
**Contact:** Dr. Lucky Chopra  
 8305 Knight Rd  
 HOUSTON, TX 77054  
**Phone:** 832-605-7385

**GENERAL CONTRACTOR**

 D E Harvey Builders  
**Contact:** Scott Paden  
 3630 Westchase  
 HOUSTON, TX  
**Phone:** 281-782-1665

**LENDER: Bank of Houston**
**Bank Signor:** Eric Kern  
**Email:** [ekern@bankhouston.com](mailto:ekern@bankhouston.com)  
 750 Bering Rd Suite 100  
 HOUSTON, TX  
**Phone:** 713-600-6658

**DISBURSEMENT AGENT**
**Contact:** ANGELA HALVORSEN  
 4223 258th Ave. S.E.  
 ISSAQUAH, WA 98029  
**Phone:** 425-557-2052 **Fax:** 425-557-2053 **Email:**  
[angela.halvorsen@tetrattech.com](mailto:angela.halvorsen@tetrattech.com)
**INSPECTOR**

 TP BUSINESS SERVICES  
**Contact:** TOM PARTIN  
 2118 Musket Ridge  
 RICHMOND, TX 77406  
**Phone:** 281-344-8944 **Fax:** 832-201-8742 **Email:** [tom.partin@tetrattech.com](mailto:tom.partin@tetrattech.com)

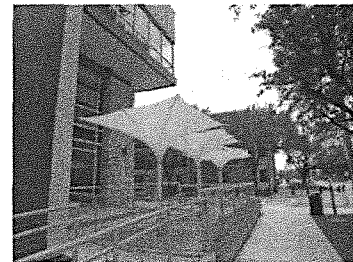
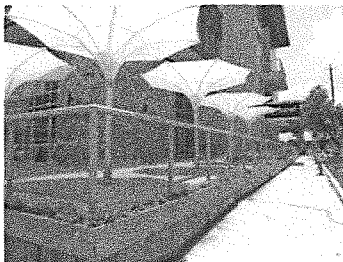
Alex Ortiz with Discovery Construction was contacted for the inspection #19 on ADM and inspection report #6 on Mr. Peeples which was conducted on May 20, 2013. This portion of this project covers first floor work for a restaurant build out.

Description of Work	Percent Complete Reported Previous Period	Percent Complete Reported this Period	Inspector Estimated Complete
<b>1 Mobilization</b>	<b>100%</b>	<b>100%</b>	<b>---</b>

Item reported complete at previous inspection.

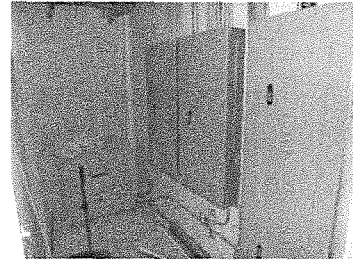
<b>2 Structural</b>	<b>95%</b>	<b>100%</b>	<b>100%</b>
---------------------	------------	-------------	-------------

Structural steel erection appears to be complete.





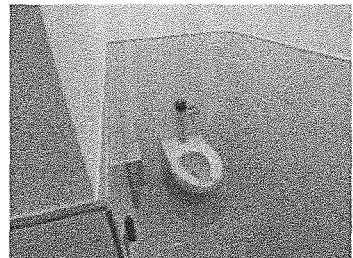
<b>3 Electrical</b>	<b>95%</b>	<b>100%</b>	<b>100%</b>
Electrical work has been completed.			



<b>4 HVAC</b>	<b>95%</b>	<b>100%</b>	<b>100%</b>
HVAC work is complete. The HVAC system was in use at the time of inspection.			



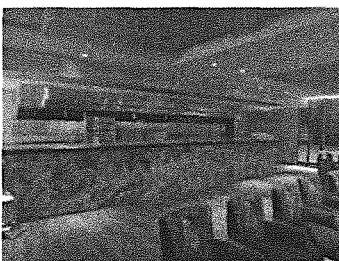
<b>5 Plumbing</b>	<b>95%</b>	<b>100%</b>	<b>100%</b>
Plumbing is complete including fixtures.			

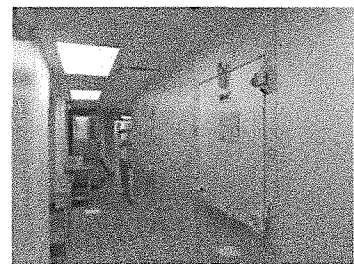
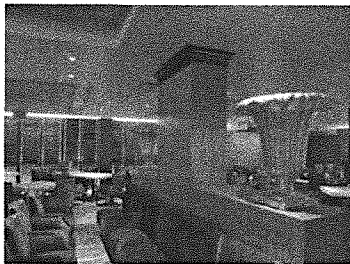


<b>6 Sprinkler</b>	<b>95%</b>	<b>100%</b>	<b>100%</b>
The fire sprinkler system is complete.			

<b>7 Fire Alarm</b>	<b>95%</b>	<b>100%</b>	<b>100%</b>
The fire alarm system appears to be complete.			

Other Photos:





**CONCLUSIONS:**

The overall percent complete for the Mr. Peebles build out appears to be 100%.

Prepared by:

*Tom Allen*



**APPLICATION AND CERTIFICATE FOR PAYMENT**

AIA DOCUMENT G702

TO: Midtown Scouts Square Property LP  
 Lucky Chopra  
 8305 Knight Road  
 Houston, Texas 77054

PROJECT: Mr. Peeples Restaurant  
 1911 Bagby, 1st Floor  
 Houston, Texas 77002

DISTRIBUTION TO:

☐ OWNER  
☐ ARCHITECT  
☒ CONTRACTOR

FROM CONTRACTOR:  
 Discovery Construction Inc.  
 701 N. Post Oak Rd. #340  
 Houston, Texas 77024

ARCHITECT: Perry N. Harrell, AIA  
 Harrell Architects, LP  
 9575 Katy Frwy, Ste. 200  
 Houston, Texas 77024

APPLICATION #: 6  
 APPLICATION DATE: 5/3/2013  
 PERIOD FROM: 3/30/2013  
 PERIOD TO: 5/2/2013

PROJECT NO: 11037062

CONTRACT DATE: October 16, 2012

**CONTRACTOR'S APPLICATION FOR PAYMENT**

0%

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL TRADE CONTRACT .....	\$ 186,809.00
2. Add'l Trade Contract Assignments .....	\$ -
3. CONTRACT SUM TO DATE .....	\$ 186,809.00
4. TOTAL COMPLETE & STORED TO DATE .....	\$ 186,809.00
5. RETAINAGE:	
a. 0% of completed work	18,680.90
b. 0% of stored materials	\$ -
TOTAL RETAINAGE .....	18,680.90
6. TOTAL EARNED LESS RETAINAGE .....	\$ 168,128.10
7. LESS PREVIOUS CERTIFICATES OF PAYMENT .....	\$ 159,946.26
8. CURRENT PAYMENT DUE .....	\$ 8,181.84
9. BALANCE TO FINISH CONTRACT .....	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for work for which previous Certificates for Payments were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: DISCOVERY CONSTRUCTION INC.

By:

Alejandro Ortiz, President

Date: May 3, 2013

State of Texas  
 County of Harris

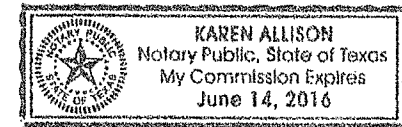
Subscribed and sworn to before me this

Notary Public:

Printed Name:

My Commission Expires:

*Karen Allison*  
 Karen Allison  
 June 14, 2016

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief, the Work has progressed as indicated, the quantity of the Work is in accordance with the Contract Documents, and the Contract is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... \$  
 (Attached explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved		
in previous months by Owner		
Total approved this Month		
TOTALS	\$ -	\$ -
NET CHANGES by Change Order	\$ -	

EXHIBIT

B

tabbles

## CONTINUATION SHEET

AIA DOCUMENT G703

Page 2

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing

APPLICATION #: 6

Contractor's signed and certification is attached.

APPLICATION DATE: 05/03/13

In tabulations below, amounts are stated to the nearest dollar.

PERIOD FROM: 03/30/13

Use Column I on Contracts where variable retainage for line items may apply.

PERIOD TO: 05/02/13

Please use a separate AIA G703 document for all change orders that are issued on this Contract.

CONTRACT DATE: 10/15/12

A	B	C	D	E	F	G		H	I	
ITEM NO.	DESCRIPTION	SCHEDULED VALUE	WORK COMPLETED				TOTAL COMPLETED AND STORED TO DATE [D+E+F]	%	BALANCE TO FINISH [C-G]	RETAINAGE 10%
			FROM PREVIOUS APPLICATION [E-F]	PREVIOUS RETAINAGE	THIS APPLICATION					
					THIS PERIOD	STORED MATERIALS [not in D or E]				
1	Mobilization	\$ 5,000.00	\$ 5,000.00	\$ 500.00	\$ -		\$5,000.00	100%	\$ -	\$ 500.00
2	Structural	\$ 78,109.75	\$ 74,204.26	\$ 7,420.43	\$ 3,905.49	\$ -	\$78,109.75	100%	\$ -	\$ 7,810.98
	- Demo existing bar area							100%		
	- Demo existing kitchen counter							100%		
	- Demo existing Office							100%		
	- Cristal Room Structural Work							100%		
	- Kitchen Counter Structure							100%		
	- Build 6' Opening in Counter							100%		
	- Build Bar Structure							100%		
	- Build Display Table Structure							100%		
	- Build Fur Downs							100%		
	- Build Columns							100%		
	- Build Arch							100%		
	- Build Booth Partition							100%		
	- Build Booth Structure							100%		
	- Install Patio Deck Extension (Labor Only)							100%		
	- Install Ceiling Tiles							100%		
	- Install Granite Countertops							100%		
	- Install Ceramic Tiles (Restrooms)							100%		
	- Final Cleaning							0%		
3	Electrical	\$ 24,500.00	\$ 23,275.00	\$ 2,327.50	\$ 1,225.00	\$ -	\$24,500.00	100%	\$ -	\$ 2,450.00
4	HVAC	\$ 30,848.50	\$ 29,306.00	\$ 2,930.60	\$ 1,542.50	\$ -	\$30,848.50	100%	\$ -	\$ 3,084.85
5	Plumbing	\$ 21,300.00	\$ 20,235.00	\$ 2,023.50	\$ 1,065.00	\$ -	\$21,300.00	100%	\$ -	\$ 2,130.00
6	Sprinkler	\$ 4,500.00	\$ 4,275.00	\$ 427.50	\$ 225.00	\$ -	\$4,500.00	100%	\$ -	\$ 450.00
7	Fire Alarm	\$ 5,272.00	\$ 5,008.00	\$ 500.80	\$ 264.00	\$ -	\$5,272.00	100%	\$ -	\$ 527.20
8	General Contractor Fee	\$ 17,278.75	\$ 16,414.81	\$ 1,641.48	\$ 863.94	\$ -	\$17,278.75	100%	\$ -	\$ 1,727.88
	Page Totals	\$186,809.00	\$177,718.07	\$17,771.81	\$9,090.93	\$0.00	\$186,809.00		\$0.00	\$18,680.90



**TETRA TECH, INC.**  
Construction Management & Inspection, Inc.

---

Date: May 13, 2013

Owner Certification and Authorization for Disbursement

The undersigned Owner **Advanced Diagnostic Management, LLP** has reviewed the draw request for the Bagby Mr. Peeples Restaurant project and does hereby authorize and direct Lender to disburse the sum of \$8181.84 from loan proceeds. And furthermore hereby approves payment of Draw No. 6 and has reviewed the attached draw report.

The Owner certifies that there has been no substantial adverse changes in his/her financial conditions, organization, operation, or fixed assets since the application for this loan was submitted and originated or subsequent to any previous disbursement by Lender.

Acknowledged and Agreed By:

  
\_\_\_\_\_  
Owner's Signature

5/16/13  
\_\_\_\_\_  
Date

Lucky Chopra  
\_\_\_\_\_  
Printed Name



DATE: 5/16/2013

CONSTRUCTION MANAGEMENT & INSPECTION, INC.  
PROJECT DRAW REPORT - DRAW #6

PROJECT #: 26997-1 W Completion Commitment  
 PROJECT NAME: ADM - Bagby - Mr. Peebles Rest.  
 OWNER: Advanced Diagnostic - Dr. Lucky Chirops  
 832-605-7385 - Contact Jiten for Inspection [jiten@decconco.com](mailto:jiten@decconco.com)  
 CONTRACTOR: Discovery Construction Inc.  
 713-957-5031

LENDER: Merchantile Bank - Lisa Botts

INSPECTOR Tom Partin  
 #DRAWS  
 #INSPECTIONS

ORIGINAL CONSTR	\$186,809.00
Net Change Orders	\$0.00
TOTAL CONSTR	\$186,809.00
Previous Disbursed	\$177,718.55
Current Disbursed	\$9,090.93
TOTAL CONSTR STORED	\$186,809.48
Less Retention (10%):	\$18,680.96
TOTAL LESS RETENTION	\$168,128.52
CONSTR BALANCE	(\$0.48)
CONSTR BAL + RET	\$18,680.48
Net Percent Disbursed:	100%

	CATEGORY DESCRIPTION	ORIGINAL CONTRACT	Change Orders	Reallocations	REVISED CONTRACT	PREVIOUS DISBURSED	Draw \$	TOTAL DISBURSED	Retention \$	AMOUNT IN RETENTION	BUDGET BALANCE	% DISB	Rptd % Comp
1	Mobilization	\$5,000.00	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$5,000.00	\$0.00	\$500.00	\$0.00	100%	
2	Structural	\$78,109.75	\$0.00	\$0.00	\$78,109.75	\$74,204.26	\$3,905.49	\$78,109.75	\$290.56	\$7,810.98	\$0.00	100%	
3	Electrical	\$24,500.00	\$0.00	\$0.00	\$24,500.00	\$23,275.00	\$1,225.00	\$24,500.00	\$122.50	\$2,450.00	\$0.00	100%	
4	HVAC	\$30,848.50	\$0.00	\$0.00	\$30,848.50	\$29,306.08	\$1,542.50	\$30,848.58	\$154.25	\$3,084.86	(\$0.08)	100%	
5	Plumbing	\$21,300.00	\$0.00	\$0.00	\$21,300.00	\$20,235.00	\$1,065.00	\$21,300.00	\$106.50	\$2,130.00	\$0.00	100%	
6	Sprinkler	\$4,500.00	\$0.00	\$0.00	\$4,500.00	\$4,275.00	\$225.00	\$4,500.00	\$22.50	\$450.00	\$0.00	100%	
7	Fire Alarm	\$5,272.00	\$0.00	\$0.00	\$5,272.00	\$5,008.40	\$264.00	\$5,272.40	\$26.40	\$527.24	(\$0.40)	100%	
8	General Contractor Fee	\$17,278.75	\$0.00	\$0.00	\$17,278.75	\$16,414.81	\$863.94	\$17,278.75	\$86.39	\$1,727.88	\$0.00	100%	
9	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	#DIV/0!	
Total Construction Contract Costs		\$186,809.00	\$0.00	\$0.00	\$186,809.00	\$177,718.55	\$9,090.93	\$186,809.48	\$909.09	\$18,680.96	(\$0.48)	100%	

Current Draw Amount

\$8,181.84

Payment of Draw Approved:

General Contractor

Owner

Inspector

Overall % Completion

NOTES:

5/16/13



## CHECK REQUEST REPORT

Project Name: ADM Building/Mr. Peeples Restaurant  
 No. ■997-1  
 Disb. Agent AH

Draw 6

	Date Thru	Total	Retainage	Amount Paid	W-9
<b>Discovery Construction Inc.</b>	05/02/13	\$ 7,865.93	\$ 786.59	\$ 7,079.34	X
701 N Post Oak Rd. Ste. 340					
Houston, TX 77024					
02-0815379 C Corp					
713-957-5031					
<b>Franklin - Padilla Electric</b>	05/02/13	\$ 1,225.00	\$ 122.50	\$ 1,102.50	X
10101 SE Fwy Ste. 400					
Houston, TX 77074					
27-1837683 LLC C Corp					
281-804-9557					

<b>Sub Total</b>	<b>\$ 9,090.93</b>	<b>\$ 909.09</b>	<b>\$ 8,181.84</b>	
TT Invoice 50663655	\$ 907.00		\$ 907.00	
<b>Total</b>	<b>\$ 9,997.93</b>	<b>\$ 909.09</b>	<b>\$ 9,088.84</b>	



**Tetra Tech Divisions**  
 A Division of Tetra Tech, Inc.  
 3475 E. Foothill Blvd.  
 Pasadena, CA 91107  
 (626) 351-4664

**Bill To:** BANK OF HOUSTON  
**ATTN:** Jennifer Surrency  
 750 Bering Drive - Suite 100  
 HOUSTON, TX 77024

**INVOICE NUMBER:** 50677366  
**INVOICE DATE:** 05/14/2013  
**REFERENCE:** PCD200110105  
**FEDERAL TAX ID#:** [REDACTED] 8514  
**PROJECT:** 100-CDI-26997  
**BILLING PERIOD FROM:** 04/05/2013  
**BILLING PERIOD TO:** 05/14/2013

Advanced Diagnostic Management, LLP  
 8305 Knight Road  
 Houston, TX 77054

**PROFESSIONAL SERVICES:**

ADM Building Addition/Renovation aka Scout Square Office Building  
 April 5, 2013 through May 14, 2013

DESCRIPTION	TOTAL AMOUNT DUE
DRAW ADMINISTRATION	\$350.00
INSPECTION SERVICES	\$557.00

**TOTAL AMOUNT DUE THIS INVOICE:** **\$907.00**

Please Remit Invoice to:  
 Tetra Tech Inc - Sunriver  
 P.O. Box 3585  
 56835 Venture Lane, Suite 204  
 Sunriver, OR 97707

FOR FURTHER INFORMATION, PLEASE CONTACT THE  
 UNDERSIGNED.

**Project Manager:**

Halvorsen, Angela

To ensure accurate posting, please note the invoice number on your check. Interest will be charged on all past-due amounts per contract terms and conditions.



## CHECK REQUEST REPORT

Project Name: ADM Building/Mr. Peeples Restaurant  
 No. 26997-1  
 Disb. Agent AH

Draw 6

	Date Thru	Total	Retainage	Amount Paid	W-9
<b>Discovery Construction Inc.</b>	05/02/13	\$ 7,865.93	\$ 786.59	\$ 7,079.34	X
701 N Post Oak Rd. Ste. 340					
Houston, TX 77024					
02-0815379 C Corp					
713-957-5031					
<b>Franklin - Padilla Electric</b>	05/02/13	\$ 1,225.00	\$ 122.50	\$ 1,102.50	X
10101 SE Fwy Ste. 400					
Houston, TX 77074					
27-1837683 LLC C Corp					
281-804-9557					

<b>Sub Total</b>	<b>\$ 9,090.93</b>	<b>\$ 909.09</b>	<b>\$ 8,181.84</b>
TT Invoice 50663655	\$ 907.00		\$ 907.00
<b>Total</b>	<b>\$ 9,997.93</b>	<b>\$ 909.09</b>	<b>\$ 9,088.84</b>



**Tetra Tech Divisions**  
 A Division of Tetra Tech, Inc.  
 3475 E. Foothill Blvd.  
 Pasadena, CA 91107  
 (626) 351-4664

**Bill To:** BANK OF HOUSTON  
**ATTN:** Jennifer Surrency  
 750 Bering Drive - Suite 100  
 HOUSTON, TX 77024

**INVOICE NUMBER:** 50677366  
**INVOICE DATE:** 05/14/2013  
**REFERENCE:** PCD200110105  
**FEDERAL TAX ID#:** 00-118514  
**PROJECT:** 100-CDI-26997  
**BILLING PERIOD FROM:** 04/05/2013  
**BILLING PERIOD TO:** 05/14/2013

Advanced Diagnostic Management, LLP  
 8305 Knight Road  
 Houston, TX 77054

**PROFESSIONAL SERVICES:**

ADM Building Addition/Renovation aka Scout Square Office Building  
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 P.O. Box 3585  
 56835 Venture Lane, Suite 204  
 Sunriver, OR 97707

FOR FURTHER INFORMATION, PLEASE CONTACT THE  
 UNDERSIGNED.

**Project Manager:**

Halvorsen, Angela

To ensure accurate posting, please note the invoice number on your check. Interest will be charged on all past-due amounts per contract terms and conditions.



**TETRA TECH, INC.**

**Construction Management & Inspection, Inc.**

Date: May 21, 2013

To: Lisa Bott – Mercantile Bank

RE: DRAW REQUEST ON THE FOLLOWING PROJECT:

**Project Name: ADM Building/Mr. Peebles Rest.**

**Draw 6**

**\$8,181.84**

**Fee Invoice**

**\$907.00**

**Total To Fund**

**\$9,088.84**

This draw request has been inspected to compare the percentage of work verses the amount requested. Tt-CMI \_\_\_is/or \_\_\_is not in agreement with the amount requested. EXCEPTIONS NOTED; If you are in agreement with this request please wire the above stated amount into our **Wells Fargo Bank Account #4100063957, Routing #121000248**. Please fax notification of the wire transfer to our office (541-593-3604) once the deposit has been made. The contractor's checks will not be Federal Expressed without this notification.

The following documents are enclosed in this package:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Original Draw Report                 | <input type="checkbox"/> Reallocation of Funds                  |
| <input type="checkbox"/> Date Down Endorsement                           | <input type="checkbox"/> Change Orders                          |
| <input type="checkbox"/> Foundation Endorsement                          | <input type="checkbox"/> Recorded Notice of Completion          |
| <input checked="" type="checkbox"/> Inspection Report                    | <input type="checkbox"/> Certificate of Occupancy               |
| <input checked="" type="checkbox"/> Contractor signed Draw Report        | <input type="checkbox"/> Contractor's Affidavit of Completion   |
| <input checked="" type="checkbox"/> Contractor's Application for Payment | <input type="checkbox"/> Building Permits                       |
| <input checked="" type="checkbox"/> Owner signed Draw Report             | <input checked="" type="checkbox"/> Check Register              |
| <input checked="" type="checkbox"/> Owner Authorization for Disbursement | <input type="checkbox"/> Vendor Activity Report (Paid & Unpaid) |

The following documents have been received and are retained in our draw file.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Invoices for draw request     | <input checked="" type="checkbox"/> Payment Vouchers for draw request |
| <input checked="" type="checkbox"/> Lien Waivers for draw request | <input type="checkbox"/> Unconditionals Prev. Draw                    |

Please notify us immediately if our balances are incorrect with your records. If you have any questions, please do not hesitate to call me.

Sincerely,

*Angela Halvorsen*

Angela Halvorsen  
Disbursement Agent/  
Contract Administrator

Banking Information  
Wells Fargo Bank  
1000 Lakes Drive  
Suite 250  
West Covina, CA 91790  
626-919-6602

DATE: 5/13/2013

CONSTRUCTION MANAGEMENT & INSPECTION, INC.  
PROJECT DRAW REPORT - DRAW #6

PROJECT #: 26997-1 W Completion Commitment  
 PROJECT NAME: ADM - Bagby - Mr. Peeples Rest.  
 OWNER: Advanced Diagnostic - Dr. Lucky Chiropa  
 832-605-7385 - Contact Jiten for Inspection [jiten@deccanco.com](mailto:jiten@deccanco.com)  
 CONTRACTOR: Discovery Construction Inc.  
 713-957-5031

LENDER: Merchantile Bank - Lisa Botts

INSPECTOR Tom Partin  
 #DRAWS  
 #INSPECTIONS

ORIGINAL CONSTR	\$186,809.00
Net Change Orders	\$0.00
TOTAL CONSTR	\$186,809.00
Previous Disbursed	\$177,718.55
Current Disbursed	\$9,090.93
TOTAL CONSTR STORED	\$186,809.48
Less Retention (10%):	\$18,680.96
TOTAL LESS RETENTION	\$168,128.52
CONSTR BALANCE	(\$0.48)
CONSTR BAL + RET	\$18,680.48
Net Percent Disbursed:	100%

	CATEGORY DESCRIPTION	ORIGINAL CONTRACT	Change Orders	Reallocations	REVISED CONTRACT	PREVIOUS DISBURSED	Draw G	TOTAL DISBURSED	Retention G	AMOUNT IN RETENTION	BUDGET BALANCE	% DISB	Rptd % Comp
1	Mobilization	\$5,000.00	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$5,000.00	\$0.00	\$500.00	\$0.00	100%	
2	Structural	\$78,109.75	\$0.00	\$0.00	\$78,109.75	\$74,204.26	\$3,905.49	\$78,109.75	\$390.55	\$7,810.98	\$0.00	100%	
3	Electrical	\$24,500.00	\$0.00	\$0.00	\$24,500.00	\$23,275.00	\$1,225.00	\$24,500.00	\$122.50	\$2,450.00	\$0.00	100%	
4	HVAC	\$30,848.50	\$0.00	\$0.00	\$30,848.50	\$29,306.08	\$1,542.50	\$30,848.58	\$154.25	\$3,084.86	(\$0.08)	100%	
5	Plumbing	\$21,300.00	\$0.00	\$0.00	\$21,300.00	\$20,235.00	\$1,065.00	\$21,300.00	\$106.50	\$2,130.00	\$0.00	100%	
6	Sprinkler	\$4,500.00	\$0.00	\$0.00	\$4,500.00	\$4,275.00	\$225.00	\$4,500.00	\$22.50	\$450.00	\$0.00	100%	
7	Fire Alarm	\$5,272.00	\$0.00	\$0.00	\$5,272.00	\$5,008.40	\$264.00	\$5,272.40	\$26.40	\$527.24	(\$0.40)	100%	
8	General Contractor Fee	\$17,278.75	\$0.00	\$0.00	\$17,278.75	\$16,414.81	\$863.94	\$17,278.75	\$86.39	\$1,727.88	\$0.00	100%	
9	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	#DIV/0!	
Total Construction Contract Costs		\$186,809.00	\$0.00	\$0.00	\$186,809.00	\$177,718.55	\$9,090.93	\$186,809.48	\$909.09	\$18,680.96	(\$0.48)	100%	

Current Draw Amount

\$8,181.84

Payment of Draw Approved:

General Contractor

Owner

Inspector

Overall % Completion

NOTES:

**PROMISSORY NOTE**

**DATE OF NOTE:** Jan 31, 2011

**PRINCIPAL AMOUNT:** Three Million, Three Hundred Fifty Thousand, Four Hundred and No/100 Dollars (\$3,350,400.00)

**MATURITY DATE:** The earlier of (i) January 1, 2012 or  
(ii) the occurrence of an Event of Default.

**INTEREST RATE:** Nine and Three-Quarters Percent (9.75%) per annum

**PAYMENT PENALTY:** In the event this Note is paid in whole or in part from proceeds other than from the United States Small Business Administration or its authorized representatives, there will be a payment penalty of Ten Percent (10%) of the then outstanding principal balance of the Note.

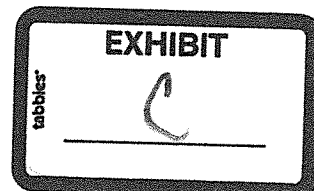
**MAKER'S NAME AND ADDRESS:** MIDTOWN SCOUTS SQUARE PROPERTY, LP,  
a Texas Limited Partnership  
1911 Bagby  
Houston, Texas 77002-8594

**CO-MAKER'S NAME AND ADDRESS:** N/A

**PAYEE'S NAME AND ADDRESS:** MERCANTILE CAPITAL CORPORATION,  
a Florida Corporation  
940 Centre Circle, Suite 3006  
Altamonte Springs, Florida 32714

FOR VALUE RECEIVED, the undersigned and if more than one, jointly and severally, (the "Maker") does hereby covenant and promise to pay to the order of the Payee or to its successors and assigns, at the Payee's Address or at such other place as the Payee may designate to the Maker in writing from time to time, in legal tender of the United States, the Principal Amount of this Promissory Note (the "Note"), or so much thereof as may be advanced by the Payee pursuant to that certain Construction Loan Agreement of even date herewith between the Maker and the Payee (together with any amendments, modifications, supplements or restatements thereof, the "Loan Agreement"), the capitalized terms used herein and not otherwise defined herein having the meanings given to such terms in said Loan Agreement, together with interest from the date hereof computed at the Interest Rate on the unpaid balance of the Principal Amount at the times and in the amounts set forth herein.

1. **PAYMENT.** Interest hereon shall be payable in consecutive monthly installments of interest only commencing on January 10, 2011 and continuing on the Tenth (10th) day of each month thereafter until the maturity date hereof, when the entire principal balance hereof and all accrued and unpaid interest thereon and all other fees, costs, and expenses, if any, shall be due and payable in full.





2. **DEFAULT.** The occurrence of any one or more of the following conditions (each an "Event of Default") shall each and all constitute a condition of default under this Note:

(a) If any payment (other than the final payment, for which no grace period is applicable hereunder) as set forth herein is not made on this Note within Ten (10) days after it becomes due (i.e., the Due Date).

(b) A default occurs under the Loan Agreement, the Mortgage/Deed of Trust, or any other Loan Document, which default is not cured within any applicable grace period.

(c) Any application or petition is filed by or against any Maker or any person who has at any time guaranteed the payment of this Note (a "Guarantor") in connection with any bankruptcy or similar proceeding or if any Maker or Guarantor acknowledges or otherwise fails to pay their debts as and when they become due.

(d) Failure to comply with each and every term, provision, or condition of, or the expiration of, the Authorization for Debenture Guarantee dated December 1, 2010, as amended.

(e) Cancellation of the Authorization Agreement for Direct Payment (ACH Debits) of even date herewith.

If any one or more of the foregoing conditions should occur, then the entire principal balance and accrued and unpaid interest thereon shall become due and payable at once or thereafter, at the option of the Payee, without notice to or demand upon the Maker, or the Payee may exercise any and all other rights available to it under applicable law or any other loan document, each of which remedy shall be cumulative. Failure to exercise these options shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

3. **LATE PAYMENT FEE, ETC.** If any payment is not made or paid on the Due Date, then, in that event, there shall also be paid to the Payee at its option, a late charge equal to Five Percent (5%) of the payment that is due on the Due Date and not paid. The purpose of such late charge shall be to reimburse the Payee for its costs and expenses in connection with servicing a delinquent account. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

4. **COSTS OF COLLECTION.** The Maker and each endorser, surety, and guarantor, agrees that they shall, jointly and severally, pay all costs, expenses and reasonable attorneys' fees, incurred by the Payee in connection with any aspect of this Note, including any default as well as any proceedings which may involve this Note or any other loan document relating hereto including, but not limited to, arbitration, litigation, bankruptcy proceedings, etc. The undersigned specifically agree that in the event of any bankruptcy of the Maker, the Payee shall be entitled to recover all its expenses and reasonable attorneys' fees incurred by the Payee in regard to any bankruptcy proceeding.

5. **INTEREST PERIOD/DEFAULT INTEREST, ETC.** Interest under this Note is computed on the basis of a Three Hundred Sixty (360)-day year period, based on the actual number of days elapsed. If any default be made in the payment of any installment of principal or interest on the Due Date or in the performance of any of the agreements, conditions, provisions or covenants contained in this Note, the Mortgage/Deed of Trust, the Loan Agreement or any of the other Loan Documents, then, in said event, this Note and all sums due hereunder shall thereafter without any further notice or action by the Payee bear interest at the highest lawful rate of interest per annum permitted under applicable laws from the date of said

default; provided, however, if default be made in the payment of any installment of principal or interest on the Due Date and such default continues for a period of Sixty (60) days or more, then, in that event, the Interest Rate shall automatically increase to Eighteen Percent (18%) per annum without any further notice to Maker or action by the Payee. Notwithstanding any term, condition, obligation or provision herein to the contrary, it is the expressed intent of the Payee that no interest, consideration or charge in excess of that permitted under applicable law may be accrued, charged or taken or become payable hereunder. In the event it is hereafter determined that the Payee of this Note has taken, charged or reserved interest in excess of that permitted under applicable law, whether due to prepayment, acceleration or otherwise, such excess shall be refunded to the Maker or credited against the sums due the Payee hereunder.

6. **COLLATERAL.** This Note is secured, *inter alia*, by a Mortgage Deed, Assignment of Leases, and Security Agreement or, alternatively, a Deed of Trust (the "Mortgage/Deed of Trust") dated of even date herewith from the Maker to the Payee, encumbering real property situated in the State of TEXAS, and to which reference is hereby made for a description of said real property, the nature and extent of the security, the rights of the Payee in respect thereof and the terms and conditions upon which this Note is issued. The Maker agrees that it shall be bound by any agreement extending the time or modifying the above terms of payment made by the Payee and the owner of the property affected by the Mortgage/Deed of Trust, whether with or without notice to the Maker, and the Maker shall continue to be liable to pay the amount due hereunder, but with interest at a rate no greater than the Interest Rate according to the terms of any such agreement of extension or modification. The unpaid balance of the Principal Amount, plus accrued interest, shall become due and payable at the option of the Payee under the happening of an event by which said balance shall or may become due and payable under the terms of the Mortgage/Deed of Trust or any other loan document relating to the Note or said Mortgage/Deed of Trust. The Mortgage/Deed of Trust is specifically not incorporated by reference into this Note.

7. **AMENDMENTS TO NOTE.** This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

8. **WAIVER OF PRESENTMENT, ETC.** All parties to this Note, whether Maker, endorser, surety, or guarantor, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor, and expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this Note, notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or the changes in the amount or amounts agreed to be paid under or by virtue of the obligation to pay provided for in this Note, or any changes or changes by way of release or surrender or substitution of any real property and collateral or either, held as security for this Note, and waive all and every kind of notice of such extension or extensions, change or changes, and agree that the same may be made without the joinder of the Maker.

9. **LAW GOVERNING.** The provisions of this Note shall be construed and interpreted in accordance with, and all rights and obligations of the parties hereunder governed by, the laws of the State of Florida without regard to conflict of law principles.

10. **RESOLUTION OF DISPUTES.** In the event any dispute should arise under this Note, the loan evidenced hereby, any loan document relating hereto, or any other aspect of the transaction between the Maker and the Payee, said dispute will, at the Payee's sole election, be resolved through binding arbitration at the offices of the Payee and in accordance with either the rules of the American Arbitration Association or any local arbitration association selected by the Payee. In the event this Note is secured by a Mortgage/Deed of Trust or other collateral, the Payee may elect to foreclose the Mortgage/Deed of Trust or any other

collateral in a judicial proceeding and elect to have any other disputes between the Maker and the Payee resolved by binding arbitration including any claims or counterclaims of the Maker.

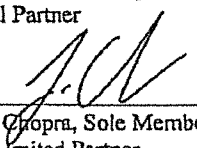
11. VENUE. The exclusive venue for any proceeding which may be brought in connection with this Note or any other aspect of the transaction between the Maker and the Payee shall be in the Circuit Court for HARRIS County, TEXAS or the U.S. District Court for TEXAS, provided, however, the Payee may waive the foregoing requirement. Further, in regard to any judicial proceeding, each party expressly waives any right to a jury trial. In addition, in regard to any collateral that may be securing this Note, the Payee may bring an action in the jurisdiction where the collateral is located and, in such event, any claims or counterclaims by the Maker will be resolved at the option of the Payee by binding arbitration as referenced above.

12. CONSTRUCTION LOAN. This Note has further been delivered in accordance with the terms and conditions of the Loan Agreement. Advances under this Note shall be made in accordance with the terms and conditions of the Loan Agreement. A default under the terms of the Loan Agreement shall be and constitute a default under the terms of this Note. The Loan Agreement is hereby incorporated herein by reference.

The Maker, intending to be legally bound, has executed this Note on the date set forth above. This Note consists of Four (4) pages.

MAKER:

MIDTOWN SCOUTS SQUARE PROPERTY, LP, a Texas Limited Partnership  
by: Midtown Scouts Square, LLC,  
a Texas Limited Liability Company,  
as General Partner

by: (sign)   
Lucky A. Chopra, Sole Member  
and also Limited Partner

Applicable Stamps/Taxes have been paid  
upon the recording of the Mortgage/Deed of Trust securing this Note.